

## 46 Am. Jur. 2d Judges § 121

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### Judges

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### IX. Disqualification to Act in Particular Case

#### B. Grounds for Disqualification

#### 3. Relationship as Grounds for Disqualification

##### b. Relationship to Attorneys

## § 121. Statutes disqualifying judge for relationship to "attorney of record" or "attorney engaged in case"

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  46

### A.L.R. Library

[Judge's previous legal association with attorney connected to current case as warranting disqualification](#), 85 A.L.R.4th 700  
[Relationship to attorney as disqualifying judge](#), 50 A.L.R.2d 143

The statutes and rules of some states specifically provide for the disqualification of a judge by reason of his or her relationship to any attorney of record,<sup>1</sup> or to an attorney otherwise engaged in the case.<sup>2</sup> For such purposes, the phrase "attorney of record" has been held to mean an attorney who actively participates in the case,<sup>3</sup> and an attorney is "engaged in the case" when the attorney has actually worked on the case in any capacity or is in a position to gain or lose financially from its resolution.<sup>4</sup>

### Observation:

A partner in a law firm is said to be "engaged" in every case in which a member of his or her firm represents a party, primarily because he or she has a financial interest in the outcome of a case. However, this rationale does not apply to a lawyer in government service, regardless of his or her powers and duties, because his or her compensation and clientele are set and the prestige of the office as a whole is not greatly affected by the outcome of a particular case. For these reasons, a government attorney is only "engaged in the case" when he or she has worked on the case directly.<sup>5</sup>

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#### Footnotes

- 1 [Smith v. Beckman](#), 683 P.2d 1214 (Colo. App. 1984); [State v. Logan](#), 236 Kan. 79, 689 P.2d 778 (1984); [Holloway v. Hopper](#), 1993 OK 56, 852 P.2d 711 (Okla. 1993).  
Under a statute providing that no judge may sit or act in any action or proceeding when he or she is related to any attorney or member of a firm of attorneys of record for a party by consanguinity or affinity within the fourth degree, a judge's son, who was a legal intern for a party's counsel of record, was not "an attorney or member of a firm of attorneys of record for a party" since the son was not a member of the bar. [Washington v. Montana Min. Properties, Inc.](#), 243 Mont. 509, 795 P.2d 460 (1990).
- 2 [Smith v. Beckman](#), 683 P.2d 1214 (Colo. App. 1984).
- 3 [State v. Logan](#), 236 Kan. 79, 689 P.2d 778 (1984).
- 4 [Smith v. Beckman](#), 683 P.2d 1214 (Colo. App. 1984).
- 5 [Smith v. Beckman](#), 683 P.2d 1214 (Colo. App. 1984).

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